

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STEPHEN BUSHANSKY,
Plaintiff,

v.

SAMUEL ARMACOST, et al.,
Defendants.

Case No. 12-cv-01597-JST

**SECOND ORDER FOR
SUPPLEMENTAL BRIEFING RE:
RULE 23.1(C) NOTICE**

On February 14, 2014, the Court ordered supplemental briefing on Plaintiff's request for voluntary dismissal without directing notice pursuant to Federal Rule of Civil Procedure 23.1(c). ECF No. 37. The Court subsequently altered the briefing schedule to permit Defendants to submit a brief as well. ECF No. 40.

Although the parties have not briefed the issue, the Court notes that there is a danger that with the dismissal of this suit, the statute of limitations on the remaining breach of duty claims may have run. See Compl. ¶ 38 (noting that the "Bylaw was . . . adopted on September 29, 2010"); In re Tyson Foods, Inc., 919 A. 2d 563, 584 (Del. Ch. 2007) (Pursuant to 10 Del. C. § 8106 "A three-year statute of limitations applies to breaches of fiduciary duty . . . The statute of limitations begins to run at the time that the cause of action accrues, which is generally when there has been a harmful act by a defendant.").

Because the statute of limitations bears directly on the question of prejudice to the derivative claim, the parties are ORDERED to submit additional briefing. Plaintiff shall file a

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1 supplemental brief by May 5, 2014. Defendants shall file a response brief by May 12, 2014.
2 Plaintiff may file a reply brief by May 16, 2014. No brief may exceed five pages in length.

3 **IT IS SO ORDERED.**

4 Dated: April 27, 2014

5 
JON S. TIGAR
United States District Judge

United States District Court
Northern District of California